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CECW-ON

Circular  
No. 1130-2-214

April 22, 2002

EXPIRES 1 June 2004  
Project Operations  
OLEORESIN CAPSICUM (PEPPER SPRAY) PROGRAM

1. Purpose. This circular provides implementation guidance for the U.S. Army Corps of Engineers (USACE) Oleoresin Capsicum (Pepper Spray) Program.
2. Applicability. This circular applies to all USACE commands having responsibilities for civil works functions.
3. Distribution Statement. Approved for public release, distribution unlimited.
4. References.
  - a. ER 1130-2-550, Recreation Operations and Maintenance Policies.
  - b. EP 1130-2-550, Recreation Operations and Maintenance Guidance and Procedures.
5. Background. The policy guidance contained in this circular is a result of recommendations from the Visitor/Ranger Safety Review Task Force, the Chemical Aerosol Task Force and several pilot tests within the Southwestern Division, Fort Worth District.
6. Policy. USACE park rangers, and other qualifying employees as stipulated in Paragraph 6b, may be authorized to carry and use Pepper Spray for self-defensive purposes in accordance with the policy requirements contained in this Circular. Implementation of this policy is at the option of the Major Subordinate Commander (MSC) who may delegate this authority to the District Commands.
  - a. General.
    - (1) The authority of managers and park rangers under the Visitor Assistance Program is limited to the enforcement of rules and regulations as designated in 36 CFR, Chapter III, Part 327 (Title 36) and in ER/EP 1130-2-550, Chapter 6 (Visitor Assistance Program). The role of the park ranger is defined as a regulation enforcer with full citation authority of Title 36. Available use of force options includes visual presence, verbal persuasion/detention unarmed

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self-defense and, under this Circular, a chemical aerosol spray. Pepper Spray is approved as a self-defensive measure in the execution of official duties as determined through the district/project risk analysis process.

(2) Title 18 U.S.C. specifies that it is a Federal crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any civilian official or employee of the Corps engaged in the performance of his or her official duties. Failure to comply with a lawful order issued by a Corps employee acting pursuant to enforcing Title 36 shall be considered as interference with that employee while engaged in the performance of their official duties. Reasonable self-defensive force, including the use of Pepper Spray, may be used only when such interference constitutes an apparent physical threat to the park ranger.

(3) This approval does not alter the basic authority and role of the USACE park ranger as specified in above references. Pepper Spray will be used for the sole purpose of removing oneself from eminent danger from an animal or another person. The spray cannot be used for any offensive measure that would constitute the employee's acting outside his/her scope of employment.

(4) Pepper Spray is considered an available self-defense option to facilitate a park ranger's withdrawal from an assault, and is not intended to replace any defense, avoidance, or control technique that is available within the ranger's existing levels of enforcement; nor should it be used as an offensive weapon. It should be used only when other reasonable methods have been exhausted. In addition, park rangers will warn subjects prior to the use of pepper spray that it will be used if necessary, unless such warning would further endanger the ranger.

(5) A complete legal review of the liability issues associated with the use of chemical aerosol for park ranger protection was conducted by Headquarters, Office of Counsel (see Appendix A).

(6) Employees may elect not to carry and use Pepper Spray for any reason. However, project offices and districts must maintain written documentation for all eligible employees who have declined the authority to carry Pepper Spray.

(7) The Oleoresin Capsicum spray, is an organically based aerosol spray designed to incapacitate an attacker with no aftereffects. It instantly immobilizes an attacking human or animal for up to 45 minutes, regardless of size or strength. Pepper Spray has been successfully proven to be effective on emotionally disturbed people; people under the influence of drugs or alcohol; enraged people who have reduced sensitivity to pain; multiple opponents; as well as domestic and wild animals without causing permanent damage.

b. Eligible Employees.

(1) Selected USACE park rangers and Natural Resources Management Program uniformed employees, who meet all the following conditions, may be eligible to receive authorization to carry Pepper Spray as part of the standard uniform:

(a) Employed at a USACE Water Resources Development Project in a permanent, seasonal or temporary position, including Coop (SCEP), Stay-In-School (STEP) and summer hire employees;

(b) Hired under the GS-025 (Park Ranger/Manager), GS-028 (Environmental Protection Specialist) job series or any related natural resource position in the GS-400 (Biological Science) job series;

(c) Authorized to wear the Natural Resources Management Uniform per ER 1130-2-550, Chapter 8;

(d) Work in one or more job functions that have been determined "at risk" under the District Position and Project Job Hazard Analysis process and;

(e) Have successfully completed all training and certification requirements

(2) For the purposes of this Circular, all employees who are eligible to receive Pepper Spray authorization will be referred to as "park rangers".

(3) Normally, all park rangers who have received authorization, will carry Pepper Spray while in uniform except in school classrooms, airplanes and other locations that prohibit the carrying of a chemical aerosol spray or where such a display is not advisable for other reasons. Pepper Spray may also be carried during unusual circumstances when the uniform is not being worn while performing official duties (i.e. control burns, boundary line maintenance).

c. Hazard Analysis Process. A comprehensive District Position Analysis and Project Activity Hazard Analysis (as per EM 385-1-1, Safety and Health Requirements Manual) will be conducted to verify which positions/jobs will warrant Pepper Spray authorization. See Appendix B, Hazard Analysis Process, for further information.

d. Approved Equipment Specifications.

(1) The following equipment is approved for all USACE employees authorized to carry Pepper Spray.

(a) Ten percent Oleoresin Capsicum concentration level

(b) Four-ounce spray canister

(c) Cone spray delivery system

(d) Clip or snap holster

(2) All training must be done in conjunction with the above approved equipment.

e. Policy Criteria on the Use of Pepper Spray.

(1) General Criteria.

(a) Pepper Spray, when used while on duty as a self-defense measure in compliance with USACE policy, is lawful force within the park ranger's scope of assigned duties for the purposes of defending the ranger from what the employee reasonably believes is imminent personal physical harm and to facilitate escape from danger.

(b) Verbal persuasion (verbalizing) and a verbal warning are required before using Pepper Spray, if circumstances allow verbalizing and warning without risk to the safety of the park ranger or others. Verbalizing and warning are not required when there is a risk to the safety of the park ranger if the use of pepper spray is delayed.

(c) All force must be reasonably proportionate to the apparent need to defend against an imminent threat of physical injury. Unreasonable and excessive force is not justified, nor is use of any force when a park ranger knows, or reasonably should know, such force is unlawful or unnecessary. Pepper Spray shall not be used against a citizen who peacefully submits and complies with park ranger instruction during an altercation or threat of an altercation or who has already ceased an assault.

(d) Visitors have a right to express verbal disagreement with a park ranger's actions and no force can be used in response to offensive language alone. Pepper Spray cannot be used to retaliate against language that is merely offensive but is not imminently physically threatening. Threats or threatening actions made to park rangers while performing their duties, which are perceived as life threatening to the ranger, are not considered mere verbal disagreements.

(e) After spraying an individual or animal, the park ranger must immediately notify local law enforcement authorities, request their assistance, and notify his/her supervisor. See Paragraph 6i After Use Guidelines, for further information.

(2) Pepper Spray **CAN BE** used against an individual who acts or reacts violently towards a park ranger under any or all of the following circumstances:

(a) After the park ranger has attempted verbalization and warning techniques (when possible) and the individual continues to act or reacts violently towards the ranger in a life-threatening manner;

(b) When the circumstances reasonably indicate that attempting to control or withdraw from the situation may lead to an escalation of force with a risk of serious physical injury to the park ranger;

(c) When the individual assaults a park ranger. However, if a person strikes or assaults the ranger, then ceases the assault and retreats, or is removed from the scene so as not to pose a further threat to the ranger's safety, the ranger may not pursue and use pepper spray against the individual;

(d) When the individual is physically assaulting an agent the of U.S. Army Corps of Engineers. For the purpose of this guidance, an “agent” of the Corps of Engineers includes Corps of Engineers employees, volunteers who are officially registered under the Corps Volunteer Program, and contractors who are performing services under a signed contractual agreement with the Corps. The park ranger is under no obligation to use pepper spray to protect any official agent of the Corps of Engineers if such action will place the ranger at greater personal risk.

(3) Pepper Spray **SHALL NOT** be used against a person who:

(a) Does not pose a physical threat to the park ranger.

(b) Submits peacefully and complies with park ranger requests and instructions during an altercation or threat of an altercation involving the ranger or park visitor.

(c) Is expressing mere verbal disagreement that does not physically threaten a park ranger.

(d) Is threatening/assaulting another person who is not an official agent of the U.S. Army Corps of Engineers; See paragraph 6 d. (2) (d) for the definition of an agent.

(e) Does not pose a significant risk to park ranger safety (i.e., elderly, very young, and disabled in an obvious manner) unless there’s a presence of a weapon or other circumstance that reasonably warrants the use of Pepper Spray.

(4) Examples of authorized and unauthorized use of Pepper Spray are contained in Appendix C.

f. Guidelines for Use.

(1) Manufacturer’s instructions and industry training for use, care, and storage of Pepper Spray must be followed. Canisters must be secured at all times to prevent use by unauthorized persons, and must not be stored in vehicles or other locations of extreme temperature variations.

(2) Aerosol canisters must be shaken and tested regularly in order to ensure that the aerosol weapon system is properly functioning. Spray only from an upright position. Users should familiarize themselves with their canisters by spraying a short burst with the wind at their backs, so as to establish the distance and width of the spray. Test should be conducted only outdoors and away from people and animals.

(3) It is important not to spray upwind, because the effects of blowback upon the user can be severe. Spraying in a crosswind will reduce the effective range, although it will not risk blowing spray upon the user.

(4) The park ranger should maintain a distance of four to six feet when spraying an individual. A person can be sprayed directly on the face up to the maximum range allowed on

individual delivery systems. Although pepper spray can be used at a close range, for immediate effect on the respiratory system, it is recommended that spraying be done at a distance of not less than 2 feet. At shorter ranges, the person's eyes will immediately shut and cause incomplete exposure to the spray. Spraying between the minimum range of 2 feet and the unit's maximum range will provide instant evaporation, assuring effective impact upon the respiratory system, quickly incapacitating the individual. A description of the physiological effects of Pepper Spray is contained in Appendix D.

g. Guidelines for Method of Carry. Pepper Spray will be carried using a clip or snap holster designed specifically for four-ounce Pepper Spray canisters.

h. Guidelines for Tactical Use. When possible, the park ranger's weak foot should be forward and the strong foot behind. Feet should be shoulder width apart or wider to create a balanced stance. The head should be directly over the hips and the weight is equal on both feet with knees slightly bent. During an assault, the park ranger should:

(1) Provide verbal warning if appropriate and reasonably safe to do so.

(2) Spray directly into the person's face (eyes, nose, and mouth). In most cases, a direct hit in the face will instantly shut the eyes and effect the respiratory system.

(3) If the attacker continues to be a threat, apply a second spray toward his nose and mouth.

(4) Stop spraying when the attacker's resistance ceases. Depart the area and await local law personnel.

i. After Use Guidelines. These guidelines are designed primarily to ensure the safety of the park ranger as well as the safety of bystanders and the individual. After using Pepper Spray on an individual, the ranger will:

(1) When necessary, use approved unarmed self-defense techniques to escape from the incident.

(2) Leave the immediate area and remain a safe distance from the individual.

(3) Maintain visual contact with the person if reasonably safe to do so.

(4) Encourage park visitors, bystanders and other persons to move to a safe location.

(5) Contact local law enforcement officials (state that Pepper Spray has been used), other Corps personnel and appropriate medical response team (if appropriate).

(6) Continue to monitor the situation from a safe distance until local law enforcement arrives.

(7) (optional) Provide the following first aid to the individual only if it is safe to do so (note: the ranger is under no obligation to provide first aid to the individual):

(a) Monitor the individual and provide verbal reassurance that all effects are temporary.

(b) Move the individual to an uncontaminated area and face him towards the wind when possible. The person should be told to relax, breathe normally and not to walk around.

(c) Use cool water (if available) to rinse the resin from the face. Eyes should be flushed with water. Do not rub affective areas. Cool water will allow for a quicker recovery. Cleaning affected skin areas with soap and water will help remove the sticky resin and expedite the recovery process. Contact lenses should be removed by the individual.

(d) Use an authorized decontamination kit (if available) furnished by the training vendor or other approved source.

(e) Ask the person if he has a heart or lung problem, diabetes, high blood pressure, or any other serious medical condition. Provide pertinent information to the responding local law enforcement officer or medical.

(f) Assure that the individual receives medical attention if symptoms persist after 30-45 minutes. All symptoms should disappear within 30-45 minutes with no aftereffects.

(g) Contact immediate supervisor or work leader to report the incident

(h) Complete all required USACE incident report forms as specified in paragraph 6 j. below.

(i) Initiate action to file the incident as a Title 18 case.

j. Reporting Requirements.

(1) All incidences of Pepper Spray use must be properly documented in accordance with normal reporting procedures and in accordance with the District Commander's Immediate Notification Policy. This reporting requirement includes situations where, in the opinion of the park ranger, the mere presence of Pepper Spray altered the outcome of the incident. Incidences must be reported through proper channels to HQUSACE (CECW-ON) within 24 hours. By definition, any incident requiring Pepper Spray represents a Title 18 assault to the employee and filing actions should be taken accordingly.

(2) A review will be made of each incident to determine the circumstances under which Pepper Spray was used and what other actions were pursued prior to the use of Pepper Spray.

k. Training Requirements.

(1) All park rangers must complete the basic Pepper Spray Aerosol Basic Training Course, a 6-hour block of instruction, prior to receiving certification and authorization to use Pepper Spray.

During Fiscal Years 2002 and 2003, HQUSACE-approved contractors and/or Corps employees, who have successfully completed the advanced Instructor Pepper Spray training course, will conduct this training. The Visitor Assistance Program for Natural Resources Management PROSPECT Course will be modified to include this training in 2003.

(2) Basic 6-Hour Course. The basic course requires students to attend classroom training, participate in practical exercises, pass all techniques on a proficiency exam and complete a written 20+ question exam with a 70% minimum passing score. Course includes the option of the student being sprayed during training or observing someone else being sprayed either in-person or on a video. The actual spraying of students under the basic course is highly recommended for the student to gain a through awareness and appreciation of the impact of using pepper spray on a individual and the personal effects of the spray if used accidentally or maliciously on a ranger. Recertification is required every 2 years by passing the written exam and all techniques on the proficiency exam.

(3) Advanced 8-hour Instructor Course". A select number of employees will attend the vendor-sponsored 8-hour Advance Instructor ("Train-The-Trainer") Pepper Spray Course on a voluntary basis. The instructor course requires students to attend classroom training, participate in practical exercises, pass all techniques on a proficiency exam and complete a written 30+ question exam with an 85% minimum passing score. Training authorization is required every year by the vendor and recertification is required every four years by completing the 8-hour advanced course. Completion of this course will qualify the employee to conduct the basic course. Per industry requirements, students who take the instructor course must be sprayed as part of the training process. Each division will be responsible for procuring the advance training course from an HQUSACE-approved contractor. Each district must submit a course outline and vendor name to HQUSACE for approval prior to conducting the advanced training course.

(4) Course Requirements. Training courses must meet industry standards and contain, at a minimum, the following subject matter taught in a combination of classroom instruction and practical exercises:

(a) HQUSACE Pepper Spray Policy and Standard Operating Procedures (i.e. self-defensive use only, used within scope of employment, agency/employee liability, local law considerations, reporting requirements, etc.)

(b) Effects of Pepper Spray (on face, eyes, respiratory system, animals, humans)

(c) Properties/Types of Pepper Spray (concentration, delivery system, canister models, storage requirements, replacement requirements)

(d) Carrying methods

(e) Recognizing the threat / situational analysis

(f) When to use Pepper Spray (use of force options)

(g) How to use Pepper Spray (verbal commands, spraying, defensive body positions, movement methods, drawing/spraying techniques)

(h) After Use Guidelines (policy requirements, optional decontamination procedures)

(i) Practical Training Exercises to include the actual spraying of students (mandatory for students in the advanced "Train-The-Trainer" Course and optional for students in the basic course).

(5) Training Learning Objectives. Students must satisfy the following training performance objectives prior to receiving certification:

(a) Demonstrate a thorough understanding of USACE policy on the use of Pepper Spray for defensive purposes only.

(b) Demonstrate a thorough understanding of when Pepper Spray can be used.

(c) Identify the agency/personal liability when using Pepper Spray outside the scope of employment.

(d) Know and understand any state or local laws and/or ordinances that pertain to the possession and use of chemical aerosol spray.

(e) Identify the effects of Pepper Spray on human beings and animals.

(f) Define a chemical irritant and a chemical inflammatory.

(g) Identify the different models of pepper spray and specific contents and capabilities of each.

(h) Demonstrate the proper way to carry pepper spray in accordance with HQUSACE instructions.

(i) Demonstrate a proper stance and position of the body when holding Pepper Spray in the hand for use or potential use with all techniques taught in the course.

(j) Deliver verbal directions or commands to combative individuals while holding pepper spray device in the hand or using the pepper spray device.

(k) Accurately spray in one-second bursts at simulated physically combative individuals.

(l) Identify the ways to decontaminate an area that has been exposed to Pepper Spray.

(m) Identify the first-aid procedures available for administering to individuals who have been exposed to pepper spray.

(n) Identify the ranger reporting requirements contained in this SOP.

(6) Training Documentation. Districts are required to maintain a training database that documents all required visitor assistance training per employee, including Pepper Spray training. Documentation must include, at a minimum and for all initial and refresher Pepper Spray training: the employee's name and location, course title/location/hours, training completion date and whether the employee was sprayed as part of the training course.

FOR THE COMMANDER:



ROBERT H. GRIFFIN  
Major General, USA  
Director of Civil Works

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APPENDIX A  
LEGAL REVIEW OF LIABILITY ISSUES

CECC-K (27-40a)

22 October 1997

## MEMORANDUM FOR CECW-ON

SUBJECT: Legal Review of Liability Issues Associated with Authorizing the Use of Chemical Aerosol for Ranger Protection

You have asked me for my views regarding the scope of authority under 16 U.S.C. 460d, whether or not rangers are "officers" within the meaning of the United States Code, and whether authorizing the use of chemical aerosols would increase government or personal liability for injuries sustained by visitors.

1. Statutory Sources of Authority-- Are Rangers "Officers?"

The promulgation and enforcement of regulations for the use of water resource development projects is provided for by 16 U.S.C. Section 460d. In relevant part, that statute provides that the Secretary of the Army may establish regulations for the public recreational use of water resource development projects. The law also provides that "[a]ll persons designated by the Chief of Engineers for that purpose shall have the authority to issue a citation for violation of the regulations.... nothing contained herein shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said regulations."

In contrast, other laws conferring law enforcement authority on federal agencies are more specific. 16 U.S.C. 1a-6 provides in part that National Park Service employees may be designated to "...maintain law and order and protect persons and property within areas of the National Park System..." Park Service rangers are specifically authorized by law to "carry firearms and make arrests without warrant..." Similarly, Forest Service employees "shall have the authority to make arrests for the violation of the laws and regulations relating to the national forests..." (This provision also contains wording identical to the last quoted section of 460d above.) Agencies exercising typical law enforcement authority appear to uniformly have specific arrest or law enforcement authority within their enabling statutes. See, e.g., 8 U.S.C. 1357 (Immigration officers' authority); 21 U.S.C. 878 (Drug Enforcement officers' authority.)

33 U.S.C. section 413 is the only provision which authorizes individuals employed by the Corps to exercise law enforcement powers. That section provides in part that "for the better enforcement of [regulations under the Rivers and Harbors Act] and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements...shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person... who may commit any of the acts or offenses prohibited by the said sections..." The arrest authority conferred in the Rivers and Harbors Act has never been implemented by the Corps, and in any event would be insufficient to support the exercise of that authority for violations occurring above the ordinary high water mark of navigable

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waters.<sup>1</sup>

The legislative history of 16 U.S.C. 460d indicates that citation authority was added to the statute in 1970, apparently in response to problems with littering and dumping occurring on fee-owned lands at flood control projects. The provision was not added because of specific concerns over law enforcement problems at these projects. S. Rep. No. 91-1422 p. 116 (91st Cong., 2d Sess.) Therefore, because of this background and the fact that Congress has repeatedly demonstrated that it is capable of including specific arrest authority where it deems warranted, interpreting section 460d as authorizing implied arrest or law enforcement authority would be inappropriate. It appears that Congress only authorized the Corps to designate individuals with specific limited powers to issue citations to enforce the regulations protecting water resource projects.

In conclusion, because the “persons” who can be designated to issues citations do not have arrest authority under 460d, I cannot conclude that rangers are included in the definition of “officers” (who do have arrest authority) under the last-quoted portion of the statute.<sup>2</sup>

## 2. Government Liability for Injuries Sustained by Visitors Subjected to Chemical Spray.

The United States’ liability for injuries or deaths suffered by members of the public is determined under the Federal Tort Claims Act (hereinafter FTCA), 28 U.S.C. Sections 1346(b), 2671 *et seq.* 28 U.S.C. 2674 provides that the United States shall be liable to the same extent as any private individual under state law, and liability is similarly determined by the law of the state in which the action complained of occurred.<sup>3</sup> Defenses to lawsuits may be determined under state law, or they may be provided as a matter of federal law under the Act.

The Corps’ initial decision to authorize the use of Mace or some other aerosol

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<sup>1</sup> There is also arrest authority for the nonpayment of recreation fees, but the Corps has similarly declined to authorize its employees to utilize this means to ensure fee collection. See 16 U.S.C. 460l-6a(e).

<sup>2</sup> The definition of “officer” in 5 U.S.C. 2104 does not appear to have much relevance to this discussion, for several reasons. Title 5 of the United States Code deals primarily with the government’s organization and personnel practices. The definition of “officer” for determining liability issues is instead contained in 28 U.S.C. 2680(h).

<sup>3</sup> In this connection, it should be noted that funds to pay such damage awards do not come out of the Corps’ budget. The money is instead paid out of the so-called “Judgment Fund” established by statute and administered by the Department of Justice and Treasury Department.

irritant would be protected by the FTCA's "discretionary function" exception to liability. This doctrine bars

"(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the federal agency or an employee of the Government, whether or not the discretion involved be abused."

In brief, what this means is that if the agency exercises its discretion in determining that public and ranger safety would be furthered by allowing the defensive use of chemical spray, this decision will not subject the government to liability. Dalehite v. United States, 346 U.S. 15, (1953), reh. den., 347 U.S. 924 (1954). Similarly, the Corps' decision to limit use of the spray to self-defense only, or to allow the ranger to refrain from administering aftercare to a sprayed visitor, should also protect the United States from liability under this defense. This would hold true regardless of the level of injury (including death) sustained by the sprayed individual.

A second defense is provided by 2680 of the FTCA, which provides specific exceptions for certain types of claims. In pertinent part, the government is immune from liability under 2680(h) for

"Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, ...*Provided*, That, with regard to the acts or omissions of investigative or law enforcement officers of the United States Government. The provision of this chapter...shall apply to any claim arising...out of assault, battery, false imprisonment false arrest.... For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." (Emphasis added.)

Under this section, the United States accepts no legal responsibility for the common-law torts of its employees, unless those employees are law enforcement officials. Therefore, an individual who stated a cause of action based on assault or battery could recover damages against the government under this section only if the assault stems from the actions of a covered officer. As noted above, because the Corps has not acted to formally allow rangers to perform law enforcement duties, this section would allow the United States to dismiss any lawsuit brought against it for the actions of a ranger in using chemical spray on a visitor.

A plaintiff could attempt to bypass this restriction and hold the United States liable for injuries, by claiming that the Corps negligently failed to adequately train and supervise

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the ranger involved in the incident. There is an apparent split of authority in the courts over this question, with some holding that training and supervision does not prevent the immunity from attaching, because the cause of action still "arises from" assault and battery. Therefore, this type of claim is also subject to dismissal. See Naisbitt v. United States, 611 F.2d 1350 (10th Cir. 1980).

In contrast, some courts have characterized training and supervision as instances where the government's negligent conduct has served as an independent cause of the injury, and suit has been allowed to proceed. DeLong v. United States, 600 F. Supp. 331 (D. Ak. 1984) (suit survived motion to dismiss because plaintiffs alleged that the government caused the injury by failing to notify Marine guards that civilian workers were authorized to be in the area where they were subsequently assaulted.) See also, Sheridan v. United States, 487 U.S. 392 (1988). If a plaintiff is able to establish that being sprayed was the result of the Corps' negligent conduct in supervising or training the ranger, the United States could be found liable for the damages sustained by the individual. Senger v. United States, 103 F.3d 1437 (9th Cir. 1996). Suppose that the Corps trains a class of rangers that the proper way to employ chemical spray is to completely subdue the attacker by emptying the cannister, thereby causing permanent injury to the attacker. The ranger's actions are within scope, but it is evident that the government has improperly taught the class how to use the spray. In some jurisdictions, the case would be dismissed under 2680, while in others it would not.

### 3. Personal Liability for Injuries Sustained by Visitors Subjected to Chemical Spray

#### *A. Common-Law Liability*

An individual attempting to sue a federal employee in his or her individual capacity might proceed on a claim for assault or battery. However, it has long been established that federal employees are immune from liability for so-called common-law torts as long as they are acting within the scope of their employment when the act complained of occurred. Barr v. Matteo, . In 1988, the Supreme Court modified the absolute immunity test when it decided Westfall v. Erwin, 484 U.S. 292. In Westfall, the Court held that it was no longer sufficient for the employee to establish that he or she was acting within scope of employment, but now had to also demonstrate that the action complained of was discretionary in nature. Id. at 297-98. In response to this decision, Congress modified the FTCA by inserting an exclusivity of suit provision and eliminating any requirement that the employee be exercising discretion. 28 U.S.C. 2679(b)(1) now requires a plaintiff attempting to sue a federal employee to name the United States as the sole defendant, even if the suit will be subject to later dismissal because of another exception to liability in the FTCA, such as 2680(h). United States v. Smith, 499 U.S. 160, 165-67 (1991). Thus, from a procedural standpoint, suit would be filed against the individual in his or her official capacity, the government would move to substitute the United States as the defendant in the case, and then file a motion to dismiss the complaint because the government cannot

be liable for assaults committed by personnel who are not law enforcement officials, as discussed above.

The key question in determining whether the employee is entitled to immunity is whether or not the conduct complained of occurred within the scope of employment. That issue will be determined by the law of the state where the incident occurred. Heuton v. Anderson, 75 F.3d 357, 360 (8th Cir. 1996); Garcia v. United States, 62 F.3d 126, 127 (5th Cir. 1995); Schrob v. Catterson, 967 F.2d 929, 934 (3d Cir. 1992). While the law of each state on scope of employment is beyond the reach of this paper, in general, the following three elements will be determinative of the question: 1) the employer authorizes the action or it is incidental to authorized duties; 2) the action occurred during the time and space limits of the employment; and 3) the action was motivated at least in part by the objective of furthering the employer's business. Accordingly, if the Corps promulgates a policy allowing the use of chemical spray, a ranger who is following the policy and uses chemical aerosol spray in a defensive manner to ward off an attack by a visitor should incur no liability for any injury or death sustained by the visitor. Cf., Krzsyeske v. C.I.R., 548 F. Supp. 101 (D. Mich. 1982), aff'd, 740 F.2d 968 (6th Cir. 1984). If, however, the ranger deviates from the policy, he or she will no longer have immunity from liability, because the action complained of will not have occurred within the scope of employment. In this case, the ranger would be responsible for retaining counsel to defend the lawsuit and paying any resulting judgment from his or her personal funds.

In sum, I do not believe that there would be a significant increase in governmental liability under the FTCA for injury or death caused by an authorized use of chemical spray against a visitor, with the possible exception of negligent training and supervision noted above. Rangers are not law enforcement officers for whose actions the United States has waived sovereign immunity, so the government would have to be substituted as the defendant under 2679(b)(2), and the case should then be dismissed because of 2680(h). The ranger would not be liable in his or her official capacity because of the absolute immunity for in-scope actions, but could face personal liability for using the spray outside the scope of employment.

#### B. *Constitutional Liability.*

A more difficult problem is presented by the issue of potential personal liability for so-called Constitutional torts. This cause of action was endorsed by the Supreme Court after a series of "no-knock" raids carried out by federal agents in the early 1970's. In Bivens v. Six Unnamed Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), federal agents entered a house and arrested an individual for drug violations. Bivens later sued the agents individually, alleging in essence that the arrest was made without probable cause. The Supreme Court held that Bivens had stated a valid cause of action, because the Fourth Amendment provides rights which are protected not only from direct governmental infringement, but also from the actions of individuals acting under color of

federal law. Subsequent case law has upheld the validity of causes of action based on the Fourth Amendment's prohibition against warrantless search and seizure of property and the Fifth Amendment's assurances that due process of law will be observed before an individual is deprived of his property, life or liberty.<sup>4</sup>

The United States cannot be substituted as the defendant in this type of case, because Congress has not waived the government's sovereign immunity for constitutional torts. See 28 U.S.C. 2679(b)(2) (remedies against the United States shall not be available for a claim "...which is brought for a violation of the Constitution of the United States...") However, where a Constitutional tort has allegedly been committed, the employee is entitled to a defense of "qualified immunity." Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982). This protects a federal employee if his or her "conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known..." Id. at 818.

To my knowledge, there is no constitutionally recognized right to attack another person with impunity, and there should be no legitimate expectation that such an assault will not meet with resistance. A review of cases involving *Bivens* decisions for Fourth and Fifth Amendment violations by federal employees does not indicate that the use of physical means to detain or deter a subject, when an authorized part of their job duties, will result in liability unless clearly excessive force is used. Therefore, I do not believe that there is substantial risk that a Constitutional tort case could be filed and won against a ranger who has used chemical aerosol in self-defense. Again, however, an aggressive use of the spray could support a Constitutional claim.

#### 4. Common Law Rights, Scope of Employment, and the Defense of Third Parties.

While the foregoing discussion has focused on the potential liability of the government and the ranger for in-scope and out-of-scope actions, it is important to note that a ranger acting outside the scope of employment may nevertheless be protected from liability by various common-law and statutory rights. For instance, assume a situation where a ranger encounters a domestic assault in progress, intervenes and uses mace to subdue the attacker, then detains the perpetrator until police arrive because the ranger fears for the safety of the victim. The attacker later sues the ranger for assault, battery,

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<sup>4</sup> Other Constitutional rights can be the subject of lawsuits against individuals, but they are not of concern for purposes of the present discussion. They include the first Amendment's free speech and freedom of religion guarantees, the Fourth Amendment's prohibition on unreasonable searches and seizures, the Sixth Amendment's right to counsel, and the Eighth Amendment's protection against cruel and unusual punishment.

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and false imprisonment.

As a matter of common law, an individual may defend him or herself from attack and may intervene to assist a third party who is being assaulted. Beard v. United States, 158 U.S. 550 (1895); C.f., Harris v. Scully, 779 F.2d 875 (2d Cir. 1985). The latter right is generally prescribed by state statute, although some states allow common-law justification as a defense to the charge. Generally, the only constraint on intervening to assist another is that 1) the intervenor would have been justified in using force in self-defense if he himself had been attacked, 2) the intervenor has a reasonable belief that the victim would have been justified in using force to repel the attacker, and 3) the intervenor believes he must act to protect the third person. Model Penal Code, Section 3.05 (ALI).

Although rangers do not possess statutory arrest authority, the power to effect citizens arrests has long been recognized:

There have been citizen arrests for as long as there have been public police--indeed much longer. In ancient Greece and Rome, and England until the nineteenth century, most arrests and prosecutions were by private individuals.... Arrest has never been an exclusively governmental function.

Spencer v. Lee, 864 F.2d 1376, 1380 (7th Cir. 1989). Therefore, even in non-scope cases, although the ranger would incur liability for attorney's fees in defending the civil (or criminal) charges, the ranger should still be successful in avoiding liability or conviction.

6. Conclusions. In summary, based on the above analysis, the specific answers to your questions are as follows:

c.1) and 2)-- The ranger would have no personal liability for a common-law assault and battery charge or a negligence action for damages, so long as the incident complained of occurred within the ranger's scope of employment. There is a slight possibility that a ranger could face being sued for infringing an individual's rights under the Fifth Amendment. Here, however, the ranger would only incur legal expenses in defending the action, since he or she should be entitled to judgment based on qualified immunity. (The severity of a person's reaction to the spray does not alter potential liability.)

3) The laws regarding immunity referenced in ER 1130-2-420 would be applicable if the agency authorizes the use of chemical spray.

4) and 5). USACE would not be directly liable for damages in a tort action, and the United States could only be found liable in some jurisdictions if the spraying were determined to be negligent, or if inadequate training or supervision had independently caused the damages.

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d.1) There is no common-law requirement or duty to assist an individual who has been injured as a result of another person's self-defensive actions. Further research would be required to ascertain whether any of the states have laws imposing such a duty on users of chemical spray,<sup>5</sup> but I have serious doubt that any of them do. It would be inconceivable that a law could require a petite woman who has warded off a large and aggressive male attacker to then turn around and assist him or incur liability for her failure to do so. (Additionally, I have been unable to find any cases in which failure to provide such assistance has been the basis for the imposition of liability, at least where the person using the spray has not been a law enforcement official.) I suspect that the reference material's discussion of aftercare presupposes that the individual utilizing the spray is a law enforcement official. In such a circumstance, the individual would be taken into custody, and it is the custodial relationship, not the spraying itself, which would impose a duty to care for the affected individual. Nevertheless, in light of the recent adverse publicity generated by the use of chemical repellants, it would be advisable to periodically review the literature and develop guidance about when and how to administer medical care if it appears that the individual has suffered an unusually severe medical reaction to the substance.

2). It is the ranger's prerogative (and indeed, is required by current policy) to retreat from the situation and wait for the appropriate medical or law enforcement personnel to arrive.

3). If the person who has been sprayed poses a continuing threat to the ranger or to others, the ranger's duty is still to retreat until law enforcement officers arrive. Further intervention in the situation in order to prevent violence to a third party would be considered to be outside the scope of employment under present policy.

Supplemental Question 1). While taking a person into protective custody does not have the same legal consequences as making an arrest, the effect of both actions is to deprive a person of his or her freedom of movement. Although there is a common-law right to make a citizen's arrest, I have not been able to find a corollary right for an ordinary citizen to detain a person simply to protect the welfare of the detainee. Unless such a right exists, detention of an individual, which is currently against Corps policy, could subject a ranger to personal liability because it would be outside the scope of employment. Therefore, the most prudent course of action, as noted in the two answers immediately preceding, is to withdraw and wait for the arrival of medical or police personnel.

2. Taking an individual into protective custody could conceivably increase the United States' liability for injuries caused by chemical spray. Again, this is because the act of

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<sup>5</sup> A brief computer search for the terms mace, pepper, capsicum or chemical spray turned up a number of state laws dealing with the subject, but none of them addresses a duty of aftercare.

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exercising custody may trigger a duty to provide medical assistance to the individual which, if negligently administered, could give rise to a lawsuit under the FTCA. Cf., City of Canton v. Harris, 489 U.S. 378, 388 n.8 (1989).

3. If the Corps implemented a policy authorizing rangers to employ chemical spray for self-defense purposes only, the subsequent failure of a ranger to employ the spray to assist a visitor being assaulted should not give rise to an increase in governmental liability. The use of the spray for this purpose will place the ranger outside the scope of employment and subject him or her to potential personal liability for assault and battery.

4. The definition of permissible "defensive purposes" for which rangers are authorized to act is a policy issue, not a legal one. Therefore, this particular question should be addressed by CECW-ON.



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**APPENDIX B**

**HAZARD ANALYSIS PROCESS**

B-1. General. The following documents provide sample guidance to assist district and project offices in conducting a District Position Hazard Analysis and associated Project Activity Hazard Analysis as per EM 385-1-1, Safety and Health Requirements Manual.

a. Position Hazard Analysis. A District Position Hazard Analysis (PHA) must be prepared to identify the positions and duties (district-wide) that may warrant the carrying and use of Pepper Spray. This process must identify all positions and duties where the possibility of negative personal confrontations may occur and the use of Pepper Spray would be appropriate.

b. Activity Hazard Analysis. Operations Managers, who have employees identified in the *Position* paragraph of the PHA, must prepare a project Activity Hazard Analysis for each duty listed in the PHA. Activities identified in the Activity Hazard Analysis as high-risk activities will warrant the carrying of Pepper Spray.

**1. DISTRICT POSITION HAZARD ANALYSIS**

Guidance for determining the mandatory carrying and potential use of Oleoresin Capsicum (Pepper Spray)

*Note: This document provides guidance in developing a district Position Hazard Analysis (PHA) for identifying positions and duties (if any) that may warrant the carrying and use of Pepper Spray against humans and animals. A district PHA must identify all positions and duties where the possibility of negative personal confrontations may occur and the use of Pepper Spray might be appropriate. Operations Managers who have employees identified in the Position paragraph of the PHA must prepare a local Activity Hazard Analysis for each duty listed in the PHA. Activities identified in the Activity Hazard Analysis as high-risk activities require the carrying of Pepper Spray. This action is in compliance with paragraph 01.A of EM 385-1-1, Safety and Health Requirements Manual.*

**POSITION\*:** Permanent and temporary (Summer hire, Co-op & Stay-In-School) Park Rangers and other personnel (specialists and Park Managers wearing the Class B uniform) grades GS-04 through GS-12 involved in Visitor Assistance Program activities under ER 1130-2-550, Chapter 6, or Natural Resource Stewardship activities under ER 1130-2-540, Chapter 2, who have one or more of the following responsibilities identified in their Job Description.

**ANALYZED BY/DATE:**

DUTY*	POTENTIAL SAFETY/HEALTH HAZARDS	RECOMMENDED CONTROLS
1.0 Patrol of Project Lands and Waters 2.0 Enforcement of 36 CFR Chapter III, Section 327 (Title 36) 3.0 Handling/Transporting User Revenues 4.0 Shoreline Management 5.0 Boundary Management 6.0 Natural Resources Management 7.0 Interpretation	Possible physical assault or attack by project visitors, domestic and wild animals.	All employee control measures identified in current project Activity Hazard Analyses that pertain to the tasks specified in the Duty Column herein.  <i>Note: Employees must always work within their scope of duties as defined in ER 1130-2-550, Chapter 6 and EP 1130-2-550, Chapter 6, Visitor Assistance Program.</i>

## PROJECT ACTIVITY HAZARD ANALYSIS

Guidance for determining the carrying and potential use of Oleoresin Capsicum (Pepper Spray)

**DUTY:** 1.0 Patrol of Project Lands and Waters

**ACTIVITY:** See list below (Principle Steps 1.1, 1.2, 1.3)

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances beyond their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray, if issued as authorized Ranger equipment, should be worn at all times while on duty, regardless of the particular planned activity.

1 - PRINCIPLE STEPS / ACTIVITIES *	2 - POTENTIAL SAFETY/HEALTH HAZARDS *	3 - RECOMMENDED CONTROLS *
1.1 Patrol in developed recreation areas	Possible confrontation or physical assault or attack by project visitors or other individuals/groups or animals in areas with or without documented incidences of unruly behavior	Employees must be trained in proper procedures and furnished authorized equipment; maintain liaison with County Sheriff as well as the carrying and use of Pepper Spray
1.2 Patrol in undeveloped recreation areas	See Above	See Above
1.3 Lake Patrols	See Above	See Above

4 - RECOMMENDED EQUIPMENT (Pepper Spray)	5 - INSPECTION REQUIREMENTS (Pepper Spray)	6 - TRAINING REQUIREMENTS (Pepper Spray)
Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity and method of carry to be determined prior to CESWD test implementation	Follow manufacture's guidelines for inspection and care of equipment.	Training to comply with ER/EP 1130-2-550, Chapter 6 and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacture's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored mandatory training is under development to meet all training/certification requirements.

**PROJECT ACTIVITY HAZARD ANALYSIS**

Guidance for determining the carrying and potential use of Oleoresin Capsicum (Pepper Spray)

**DUTY:** 2.0 Enforcement of 36 CFR Chapter III, Section 327, Title 36  
**ACTIVITY:** See list below (Principle Step 2.1)

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances out of their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray, if issued as authorized Ranger equipment, should be worn at all times while on duty, regardless of the particular planned activity.

1 - PRINCIPLE STEPS / ACTIVITIES *	2 - POTENTIAL SAFETY/HEALTH HAZARDS *	3 - RECOMMENDED CONTROLS *
2.1 Enforcement of Title 36 CFR rules and regulations through use of verbal and written warning/citations by stay-in-school, co-op, summer, and permanent ranger staff.	Possible confrontation or physical assault or attack by project visitors or other individuals/groups or animals in areas with or without documented incidences of unruly behavior	Employees must attend required training including visitor assistance and citation courses. They must be trained in ability to assess situations, proper communication styles, techniques and conflict/dispute resolution. Employees must maintain liaison with County Sheriff and TX Parks & Wildlife. Employees must be furnished and properly trained in use of authorized equipment to include reliable communications equipment and Pepper Spray
4 - RECOMMENDED EQUIPMENT (Pepper Spray) Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity and method of carry to be determined prior to CESWD test implementation	5 - INSPECTION REQUIREMENTS (Pepper Spray) Follow manufacture's guidelines for inspection and care of equipment	6 - TRAINING REQUIREMENTS (Pepper Spray) Training to comply with ER/EP 1130-2-550, Chapter 6 and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacture's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored training is

## PROJECT ACTIVITY HAZARD ANALYSIS

Guidance for determining the carrying and potential use of Oleoresin Capsicum (Pepper Spray)

**DUTY:** 3.0 Handling/Transporting User Revenues  
**ACTIVITY:** See list below (Principle Steps 3.1, 3.2, 3.3)

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances out of their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray, if issued as authorized Ranger equipment, should be worn at all times while on duty, regardless of the particular planned activity.

1 - PRINCIPLE STEPS / ACTIVITIES *	2 - POTENTIAL SAFETY/HEALTH HAZARDS *	3 - RECOMMENDED CONTROLS *
3.1 Collections of user revenues	Possible confrontation or physical assault or attack by project visitors or other individuals/groups in areas with or without documented incidences of unruly behavior	Employees must be furnished authorized equipment, to include reliable communication equipment. Employees must vary times and routes when collecting fees to avoid establishing a routine pattern. Maintain close liaison with County Sheriff as well as the carrying and use of pepper spray.
3.2 Transportation of user revenues	See Above	See Above
3.3 Storage of user revenues	See Above	See Above
4 - RECOMMENDED EQUIPMENT (Pepper Spray)	5 - INSPECTION REQUIREMENTS (Pepper Spray)	6 - TRAINING REQUIREMENTS (Pepper Spray)
Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity and method of carry to be determined prior to CESWD test implementation	Follow manufacture's guidelines for inspection and care of equipment	Training to comply with ER/EP 1130-2-550, Chapter 6 and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacture's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored training is under development to meet all training/certification requirements.

## PROJECT ACTIVITY HAZARD ANALYSIS

Guidance for determining the carrying and potential use of Oleoresin Capsicum (Pepper Spray)

**DUTY:** 4.0 Shoreline Management  
**ACTIVITY:** See list below (Principle Step 4.1)

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances out of their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray, if issued as authorized Ranger equipment, should be worn at all times while on duty, regardless of the particular planned activity.

1 - PRINCIPLE STEPS / ACTIVITIES *	2 - POTENTIAL SAFETY/HEALTH HAZARDS *	3 - RECOMMENDED CONTROLS *
4.1 Inspections/Administration of Outgrant Areas.	Possible confrontation or physical assault or attack by project visitors or other individuals/groups or animals in areas with or without documented incidences of unruly behavior	Employees must be trained in proper procedures and furnished authorized equipment including Pepper Spray.
4 - RECOMMENDED EQUIPMENT (Pepper Spray) Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity and method of carry to be determined prior to CESWD test implementation	5 - INSPECTION REQUIREMENTS (Pepper Spray) Follow manufacture's guidelines for inspection and care of equipment	6 - TRAINING REQUIREMENTS (Pepper Spray) Training to comply with ER/EP 1130-2-550, Chapter 6 and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacture's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored training is under development to meet all training/certification requirements.

## PROJECT ACTIVITY HAZARD ANALYSIS

Guidance for determining the carrying and potential use of Oleoresin Capsicum (Pepper Spray)

**DUTY:** 5.0 Boundary Line Maintenance  
**ACTIVITY:** See list below (Principle Steps 5.1 5.2, 5.3, 5.4)

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances out of their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray, if issued as authorized Ranger equipment, should be worn at all times while on duty, regardless of the particular planned activity.

1 - PRINCIPLE STEPS / ACTIVITIES *	2 - POTENTIAL SAFETY/HEALTH HAZARDS *	3 - RECOMMENDED CONTROLS *
5.1 Survey / marking of project boundary lines	Possible confrontation or physical assault or attack by project visitors or other individuals/groups or animals in areas with or without documented incidences of unruly behavior	Employees must be trained in proper procedures and furnished authorized equipment including Pepper Spray.
5.2 Boundary line fencing	See Above	See Above
5.3 Boundary line disputes/discrepancies	See Above	See Above
5.4 Encroachments/unauthorized activities	See Above	See Above

4 - RECOMMENDED EQUIPMENT (Pepper Spray)	5 - INSPECTION REQUIREMENTS (Pepper Spray)	6 - TRAINING REQUIREMENTS (Pepper Spray)
Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity and method of carry to be determined prior to CESWD test implementation	Follow manufacturer's guidelines for inspection and care of equipment	Training to comply with ER/EP 1130 -2-550, Chapter 6 and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacturer's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored training is under development to meet all training/certification requirements.

**PROJECT ACTIVITY HAZARD ANALYSIS**  
Guidance for determining the carrying and potential use of Oleoresin Capsicum (Pepper Spray)

**DUTY:** 6.0 Natural Resources Management  
**ACTIVITY:** See list below (Principle Steps 6.1, 6.2, 6.3, 6.4)

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances out of their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray, if issued as authorized Ranger equipment, should be worn at all times while on duty, regardless of the particular planned activity.

1 - PRINCIPLE STEPS / ACTIVITIES *	2 - POTENTIAL SAFETY/HEALTH HAZARDS *	3 - RECOMMENDED CONTROLS *
6.1 Monitor and protect cultural resources	Possible confrontation or physical assault or attack by project visitors or other individuals/groups or animals in areas with or without documented incidences of unruly behavior	Employees must be trained in proper procedures and furnished authorized equipment including Pepper Spray.
6.2 Agricultural/Grazing lease program	See Above	See Above
6.3 Hunting area monitor	See Above	See Above
6.4 Investigation of illegal activities- Disposal/dumping of waste, prohibited crops	See Above	See Above
4 - RECOMMENDED EQUIPMENT (Pepper Spray)	5 - INSPECTION REQUIREMENTS (Pepper Spray)	6 - TRAINING REQUIREMENTS (Pepper Spray)
Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity and method of carry to be determined prior to CESWD test implementation	Follow manufacture's guidelines for inspection and care of equipment	Training to comply with ER/EP 1130-2-550, Chapter 6 and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacture's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored training is under development to meet all training/certification requirements.

# PROJECT ACTIVITY HAZARD ANALYSIS

Guidance for determining the carrying and potential use of Oleoresin Capsicum (pepper spray)

**Duty: 7.0 Interpretation**

**Activity: See list below (Principle steps 7.1, 7.2)**

The following matrix lists major duties and associated activities performed by Park Rangers. Potential safety/health hazards as well as recommended controls are also detailed.

A Park Ranger's job includes a wide variety of duties and activities. Their planned daily schedule is regularly interrupted by circumstances out of their control. They are subject to being notified and expected to respond immediately to various situations as they occur. Even planned activities involving the public, which normally would not be considered "high risk," may escalate into a "high risk" situation unexpectedly. As such, Rangers may find themselves in circumstances with the potential for safety and health risks that were unplanned and unexpected. Therefore, authorized Ranger safety equipment must be available for immediate and effective use at all times. Because of this, it is felt that pepper spray if issued as authorized Ranger equipment, should be worn at all times while on duty regardless of the particular planned activity.

1. PRINCIPLE STEPS/ACTIVITIES	2. POTENTIAL SAFETY/HEALTH HAZARDS	3. RECOMMENDED CONTROLS
7.1 Public meetings	Possible confrontation or physical assault by individuals/groups attending meetings.	Employees must be trained in ability to assess situation, proper communication styles and techniques, and confront/dispute resolution. Employees must be furnished and properly trained in use of authorized equipment to include reliable communication equipment and Pepper Spray.
7.2 Outreach programs (civic groups, schools programs)	see above	see above
4. RECOMMENDED EQUIPMENT (Pepper Spray)	5. INSTRUCTION REQUIREMENTS (Pepper Spray)	6. TRAINING REQUIREMENTS (Pepper Spray)
Equipment/procedures identified in EP 1130-2-550, Chapter 2 and 6, plus HQ authorized Pepper Spray and holster. Type, quantity, and method of carry to be determined prior to CESWD test implementation.	Follow manufacture's guidelines for inspection and care of equipment.	Training to comply with ER/EP 1130-2-550, Chapter 6, and district and local requirements. Additional mandatory training for Pepper Spray to follow HQ-sponsored training course, manufacture's guidelines, agency regulations, and project training requirements for proper product use and understanding of product limitations. Formalized HQUSACE-sponsored training is under development to meet all training/certification requirements.

## APPENDIX C

### EXAMPLES OF AUTHORIZED AND UNAUTHORIZED USE OF PEPPER SPRAY

#### C-1. Example #1

a. A park ranger responds to excessively loud noise late at night at the park. Upon arrival, he is confronted by a hostile but unarmed man. Instead of answering the ranger's questions the man yells at the ranger and tells him to get out of his face, and threatens to attack the ranger. At this point, the man moves quickly towards the ranger.

b. Ranger Actions: The ranger is authorized to use pepper spray against this person with a verbal warning if possible. This conduct reasonably appears to be an imminent threat of physical contact and injury. The fact that the suspect is unarmed does not lessen the risk of being overpowered and rendered helpless. It is not necessary that the suspect be bigger or appear physically stronger than the ranger since the risk of danger does not necessarily depend on physical size or strength. This is a defensive use of pepper spray.

#### C-2. Example #2:

a. Ranger watches as two young men walk through a parking lot, looking into parked cars, and apparently placing their hands on car door handles with the intent to find unlocked cars. A number of car break-ins and larcenies have occurred in this lot and arrests have been made of suspects carrying knives and screwdrivers. The ranger gets a full physical description of the men and attempts to withdraw from the situation. The men approach the ranger and inquire as to the ranger's intent. The ranger then asks the men for identification. The men use obscene language and tell the ranger that they have no ID and have done nothing wrong, and that the ranger can do nothing to them. The men proceed to walk away.

b. Ranger Actions: In accordance with policy pepper spray is not authorized to gain compliance with questions or requests for ID. The men are displaying verbal disagreement that does not threaten the ranger. The ranger should contact local law enforcement officials immediately with details of the encounter with full descriptions of the individuals.

#### C-3. Example #3:

a. Ranger arrives at the scene of an apparent verbal altercation between two men. The ranger inquires as to what is going on. The men shout obscenities at each other and suddenly began flailing away at each other and the ranger. He manages to free himself and is face-to-face with his attackers who continue to advance upon the ranger with obvious hostile intent.

b. Ranger Actions: The ranger is authorized to use pepper spray against his attacker(s) without giving a warning. At this point, the ranger should contact local law enforcement personnel immediately. The individuals involved in this altercation should not be sprayed unless the ranger is somehow threatened during his scope of employment. This is a defensive action.

## APPENDIX D

### PHYSIOLOGICAL EFFECTS OF PEPPER SPRAY

D-1. General. A one-second burst to the face will affect three major areas upon contact: (1) the eyes; (2) the respiratory system; and (3) the skin. All effects are temporary, and will usually completely disappear within 30-45 minutes.

a. Effect on Eyes. A direct spray in the face will cause dilation of the capillaries and instant closing of the eyes and swelling of the eyelids. Effects range from severe twitching or spasmodic concentration of the eyelids to involuntary closing of the eyes. The eyes appear to be red for up to 30 minutes. People with eyeglasses or contact lenses will be equally affected.

b. Effect on Respiratory System. A direct spray produces immediate respiratory inflammation, which causes uncontrollable coughing, retching, shortness of breath, and gasping for air with a gagging sensation in the throat. Inflammation of mucous membranes produces difficulty in breathing through the nose. Inflammation of the epiglottis causes shallow breathing through the mouth. As aggression increases, breathing becomes rapid and increases the effects of pepper spray. Respiratory functions return to normal within 10 to 30 minutes.

c. Effect on Skin. A direct burst of Pepper Spray on the face will cause an immediate burning sensation of the skin and mucous membranes inside the nose and mouth. Occasionally, the subject's lips will be swollen and discolored. Depending on the complexion of the individual, skin color will range from slight discoloration to a bright redness. Skin discoloration will disappear within 10 to 45 minutes, depending on the immediacy of decontamination as well as access to soap and cool water. The skin may also turn yellow from the spray, but can easily be washed off.

d. Pepper Spray has no long-lasting side effects or aftereffect. It can be used to control any high stress situation while producing rapid physiological action, desired effects in low concentration, and permits rapid recovery without lasting effects

e. Although this product is proven to be extremely effective, the reliability cannot be guaranteed 100%.